

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSVALDO LORENZO SAUCO, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	05 Civ. 3955 (TPG)
- against -	:	
	:	<u>OPINION</u>
THE REPUBLIC OF ARGENTINA,	:	
	:	
Defendant.	:	
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Plaintiffs are the beneficial owners of certain bond indebtedness issued by defendant The Republic of Argentina. The Republic defaulted on such indebtedness in December 2001 during a profound fiscal crisis. Plaintiffs are suing to recover amounts due to them as a result of the default and have moved for summary judgment. Plaintiffs also move to strike the Republic's discovery requests.

The motions are granted.

FACTS

The bond indebtedness at issue is governed by Fiscal Agency Agreements dated December 10, 1993 (the "1993 FAA") and October 19, 1994 (the "1994 FAA"). The 1994 FAA is the same agreement that governed the bond indebtedness on which this court granted summary judgment to the plaintiffs in Lightwater Corporation Ltd. v. Republic of Argentina, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003). Section 22 of the 1994 FAA and Section

20 of the 1993 FAA state that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. Both FAAs provide that the Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. Paragraph 12 of the 1994 FAA provides for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs,

each holder of Securities and such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately

The 1993 FAA contains similar language.

On December 24, 2001 the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. The court refers to its previous opinions for a description of the circumstances of these defaults. Lightwater, 2003 WL 1878420, at *2; Applestein v. Republic of Argentina, No. 02 Civ. 1773, 2003 WL 1990206, at *1 (S.D.N.Y. Apr. 29, 2003). On April 11, 2005, plaintiffs sent notices to Deutsche Bank Trust Company Americas (the successor to Bankers Trust Company, the Fiscal Agent of The Republic of Argentina), declaring the principal amounts of the debt securities held by

plaintiffs to be immediately due and payable. The bonds that are the subject of this action are listed hereafter. Also listed are the amounts of the beneficial interests owned by each plaintiff.¹

The following tables contain the necessary identifying information regarding each plaintiff's beneficial interests in bonds.

¹ The court notes the distinction between bonds and beneficial interests. In some previous opinions, the court has simply referred to the plaintiffs as owners of "bonds," when in fact plaintiffs are technically owners of "beneficial interests in bonds." The Republic actually issues "a bond" to a depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in Million Air Corp. v. Republic of Argentina, No. 04 Civ. 1048, 2005 U.S. Dist. LEXIS 23904 (S.D.N.Y. Oct. 17, 2005).

Table 1.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Griselda Teresa Dulevich
<u>Face Value:</u>	U.S. \$ 430,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AN0; ISIN No. US040114AN02
<u>Date Of Issuance:</u>	September 10, 1996.
<u>Date Of Maturity:</u>	September 10, 2006.
<u>Interest Rate/Payable:</u>	11 %
<u>Date Of Purchase:</u>	On or about January 15, 2001 and March 2, 2001.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Suiza dated November 30, 2005.

Table 2.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Griselda Teresa Dulevich
<u>Face Value:</u>	U.S. \$ 150,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114BE9; ISIN No. US040114BE93
<u>Date Of Issuance:</u>	April 7, 1999.
<u>Date Of Maturity:</u>	April 7, 2009.
<u>Interest Rate/Payable:</u>	11.75 %.
<u>Date Of Purchase:</u>	On or about January 15, 2001 and March 2, 2001.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Suiza dated November 30, 2005.

Table 3.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Griselda Teresa Dulevich
<u>Face Value:</u>	U.S. \$ 130,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AZ3; ISIN No. US04114AZ32
<u>Date Of Issuance:</u>	June 4, 1998.
<u>Date Of Maturity:</u>	December 4, 2005.
<u>Interest Rate/Payable:</u>	11%
<u>Date Of Purchase:</u>	On or about January 15, 2001 and March 2, 2001.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Suiza dated November 30, 2005.

Table 4.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Griselda Teresa Dulevich
<u>Face Value:</u>	U.S. \$ 200,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US040114AH34
<u>Date Of Issuance:</u>	December 20, 1993.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	On or about October 15, 2001.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Suiza dated November 30, 2005.

Table 5.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Griselda Teresa Dulevich
<u>Face Value:</u>	U.S. \$ 99,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US040114AH34
<u>Date Of Issuance:</u>	December 20, 1993.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	On or about January 25, 2005.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Certificate from Caja de Valores dated December 16, 2005.

Table 6.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Daniel Horacio Rolfo and Alicia Evelia Galiani
<u>Face Value:</u>	U.S. \$ 255,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US040114AH34
<u>Date Of Issuance:</u>	December 20, 1993.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	On or about December 6, 2004.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Suiza dated November 30, 2005.

Table 7.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Maria Mercedes Sauco, Maria Griselda Sauco, Maria Florencia Sauco, and Maria Agustina Sauco.
<u>Face Value:</u>	U.S. \$ 295,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AN0; ISIN No. US040114AN02
<u>Date Of Issuance:</u>	September 10, 1996.
<u>Date Of Maturity:</u>	September 10, 2006.
<u>Interest Rate/Payable:</u>	11 %
<u>Date Of Purchase:</u>	On or about October 2003.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Miami Agency dated November 30, 2005.

Table 8.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Maria Mercedes Sauco, Maria Griselda Sauco, Maria Florencia Sauco, and Maria Agustina Sauco.
<u>Face Value:</u>	U.S. \$ 365,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114BE9; ISIN No. US040114BE93
<u>Date Of Issuance:</u>	April 7, 1999.
<u>Date Of Maturity:</u>	April 7, 2009
<u>Interest Rate/Payable:</u>	11.75 %
<u>Date Of Purchase:</u>	On or about October 2003.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Miami Agency dated November 30, 2005.

Table 9.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Maria Mercedes Sauco, Maria Griselda Sauco, Maria Florencia Sauco, and Maria Agustina Sauco.
<u>Face Value:</u>	U.S. \$ 200,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US040114AH34
<u>Date Of Issuance:</u>	December 20, 1993.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	On or about October 2003.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from BBVA Miami Agency dated November 30, 2005.

Table 10.

<u>Plaintiff Bond Holder or Beneficial Owner:</u>	Osvaldo Lorenzo Sauco
<u>Face Value:</u>	U.S. \$ 93,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AH3; ISIN No. US040114AH34
<u>Date Of Issuance:</u>	December 20, 1993.
<u>Date Of Maturity:</u>	December 20, 2003.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	On or about January 25, 2005.
<u>Acceleration:</u>	Notice sent April 11, 2005.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Certification from Caja de Valores dated December 16, 2005.

DISCUSSION

This Court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the FAAs. See Mazzini v. Republic of Argentina, No. 03 Civ. 8120, 2005 U.S. Dist. LEXIS 5692 (S.D.N.Y. Mar. 31, 2005). Only certain specific issues need to be discussed in connection with the present motion.

Standing and Proof of Ownership

In the two opinions in Fontana v. Republic of Argentina, 415 F.3d 238 (2d Cir. 2005), and Applestein v. Province of Buenos Aires, 415 F.3d 242 (2d Cir. 2005), the Second Circuit has held that an owner of a beneficial interest, such as plaintiffs here, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

The Republic has agreed to waive objections based on lack of authorization where the court makes a finding of current ownership. See Transcript, March 28, 2006, Cilli v. Republic of Argentina (04 Civ. 6594).

Here, plaintiffs have adequately demonstrated through their account statements that owned the beneficial interests as of various dates in 2005. There is no evidence of any change of ownership thereafter.

CONCLUSION

The motion to strike defendant's discovery requests is granted.

The motions for summary judgment are granted. Judgment will be entered for the principal amount of the bonds plus accrued interest.

The parties shall consult with one another concerning the form of the judgment and the amounts of interest that should be awarded in the judgment. If the parties are unable to reach agreement on those subjects, they shall jointly submit an agreed proposed judgment to the court. If the parties are unable to reach agreement on those subjects, plaintiffs shall submit a proposed judgment to the court, and the Republic shall submit any objections to plaintiffs' proposed judgment within five business days thereafter. The court will then resolve any remaining disagreements.

SO ORDERED.

Dated: New York, New York
May 15, 2006

A handwritten signature in cursive script, reading "Thomas P. Griesa", written over a horizontal line.

THOMAS P. GRIESA
U.S.D.J.